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Reply to Office Action of February 23, 2003

Atty Dkt No. RPC 0555 PUS

### Remarks

Claims 1-36 are pending in this application. Claims 1 and 36 have been amended, and no claims have been added or canceled. Reconsideration and reexamination of this application are respectfully requested in light of the above amendments and the following remarks.

**Rejection of Claims 1-35 Under 35 U.S.C. § 103(a)  
over Apps '279 in view of Hammett, McGrath, and Sauey**

Claims 1-35 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,660,279 issued to Apps et al. ("Apps '279") in view of U.S. Patent No. 6,079,554 issued to Hammett ("Hammett"), U.S. Patent No. 6,047,844 issued to McGrath ("McGrath"), and U.S. Patent No. 2,929,530 issued to Sauey ("Sauey"). In response, claim 1 has been amended to further define the subject matter of the invention.

Claim 1 has been amended to recite "the second pair of opposed walls longer than the first pair of opposed walls and having an uppermost portion" and "the at least one interior member having a height less than the height of the uppermost portion of the second pair of opposed walls." The Examiner admits that Apps '279 discloses interior columns that are the same height as the wall structure, but asserts that Hammett, McGrath, and Sauey disclose interior columns of shorter height than the wall structure, such that it would have been obvious to modify the height of the internal columns of Apps '279 (Office Action, p. 2). Applicant respectfully disagrees for the reasons stated below.

With reference first to McGrath, Applicant asserts that McGrath discloses a bottle support surface 46 having a top edge 51 which, while lying slightly below the handle on end wall 26, is the same height as the side walls 27 (*see* McGrath, FIGS. 25 and 27). McGrath does not disclose or suggest an interior member "having a height less than the height of the uppermost portion of the second pair of opposed walls" (i.e., side walls) as recited by Applicant in claim 1. Claims 20, 34, and 35 each recite "the interior columns having a height less than the height of the pylons" wherein the pylons are defined as part of the wall structure.

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With reference again to FIGS. 25 and 27, top edge 51 is only of lesser height than the handle, but is equal in height to the uppermost portion of the remainder of the wall structure. McGrath does not disclose or suggest the lower height of interior columns compared with the height of the uppermost portion of the second pair of opposed walls or the height of the pylons, and thus McGrath and Apps '279 cannot be properly combined to achieve Applicant's claimed invention.

Turning now to Hammett, Applicant submits that Hammett's spacer members 21 (FIG. 1) are not of sufficient height to provide lateral support to bottles loaded in the tray, but rather function only to "provide greater stability to a stack of empty trays" (*see* Hammett, col. 5, lines 59-61). Accordingly, there is no motivation to combine Hammett and Apps '279. Furthermore, Hammett does not recognize problems solved by Applicant's invention, namely a reduction in the height of the interior columns below the height of the uppermost portion of the second pair of opposed walls or the height of the pylons to reduce tray weight, reduce mold time, and facilitate faster and more even cooling while still maintaining sufficient height to provide lateral support for loaded bottles (*See*, p. 8, line 20 - p. 9, line 5). As such, Applicant asserts that Apps '279 and Hammett cannot be properly combined to achieve Applicant's claimed invention.

Lastly, with reference to Sauey, a shotgun shell box is disclosed which includes a cover 12 and holds cylindrical shotgun shells below the top edge of side walls 22, 24 (*see* Sauey, col. 1, lines 47-49; col. 2, lines 16-20; FIG. 1). Sauey does not disclose or suggest a low depth tray having side walls lower than the height of its stored product as in Applicant's invention, but rather discloses a box which completely contains its stored product and which, due to its cover, prohibits the storage of a product which extends beyond the height of the side walls. As such, there is no motivation to combine Sauey and Apps '279 and, in fact, Sauey teaches away from Applicant's claimed invention. Again, Sauey fails to appreciate this solution achieved by Applicant's invention, wherein the interior column height is reduced compared with the height of the uppermost portion of the second pair of opposed walls or the height of the pylons while still maintaining the stability of stored bottles having a height greater

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than the wall structure. For these reasons, Sauey and Apps '279 cannot be properly combined to produce Applicant's invention.

Therefore, Applicant believes that independent claims 1, 20, and 34-35 are patentably distinguishable over the combination of Apps '279 with any or all of the Hammett, McGrath, and Sauey references. Accordingly, reconsideration and withdrawal of the rejection of these claims, and their corresponding dependent claims, under 35 U.S.C. § 103(a) is respectfully requested.

**Rejection of Claims 1-10 and 12-34 Under 35 U.S.C. § 103(a)  
over Apps '793 or Apps '002 in view of Hammett, McGrath, and Sauey**

Claims 1-10 and 12-34 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,073,793 issued to Apps et al. ("Apps '793") or U.S. Patent No. 4,978,002 issued to Apps et al. ("Apps '002") in view of Hammett, McGrath, and Sauey. Again, the Examiner admits that neither Apps '793 nor Apps '002 disclose interior columns that are of lesser height than the wall structure, but asserts that Hammett, McGrath, and Sauey disclose such a feature (Office Action, p. 2). For the reasons explained above for each of the Hammett, McGrath, and Sauey references, Applicant asserts that the combination of these references with either Apps '793 or Apps '002 fails to achieve Applicant's claimed invention as recited in claims 1, 20, and 34. Accordingly, Applicant believes that independent claims 1, 20, and 34, and corresponding dependent claims 2-10, 12-19, and 21-33, are patentably distinguishable over Apps '793 or Apps '002 in view of Hammett, McGrath, and Sauey, and therefore respectfully requests reconsideration and withdrawal of this rejection.

**Rejection of Claim 36 Under 35 U.S.C. § 103(a)  
Over Apps '793, Apps '002, Apps '279 and McGrath**

Claim 36 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Apps '793, Apps '002, and Apps '279 in view of McGrath. Once again, the Examiner admits that the Apps references fail to disclose the interior member having a height less than the height of the wall structure, but the Examiner asserts that McGrath discloses this feature (Office Action, p. 3). In response, claim 36 has been amended to recite "a first pair of

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opposed walls each having a handle" and "a second pair of opposed walls attached to the first pair of opposed walls to form a wall structure, the second pair of opposed walls having an uppermost portion" wherein the at least one interior member has a height "less than the height of the uppermost portion of the second pair of opposed walls." As stated above with respect to claim 1, McGrath's top edge 51 is not less than the height of the uppermost portion of the second pair of opposed walls. As such, McGrath cannot be properly combined with any of Apps '793, Apps '002, or Apps '279 to achieve Applicant's claimed invention. Therefore, claim 36 is believed to be patentably distinguishable over the combination of these Apps references and McGrath, and reconsideration and withdrawal of this rejection is respectfully requested.

#### **Rejection of Claim 36**

##### **Under 35 U.S.C. § 103(a) Over McGrath**

Claim 36 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over McGrath. As described above, claim 36 has been amended to clarify that the interior member is less than the height of the uppermost portion of the second pair of opposed walls. In contrast, McGrath's top edge 51 is clearly only of lesser height than the handle and not of lesser height than the uppermost portion of any other part of the wall structure. Furthermore, McGrath lacks "a plurality of interior divider walls extending upwardly from the base within the wall structure" and an interior member "connected to the divider walls" as recited by Applicant. Still further, the Examiner states that McGrath discloses the invention except for the plurality of bottles. However, claim 36 does not recite a plurality of bottles, but rather recites that "the at least one interior member, the base, the divider walls, and the wall structure together define a plurality of bottle retaining pockets" (emphasis added) which are also absent from McGrath. Accordingly, claim 36 is believed to be patentably distinguishable over McGrath, and Applicant respectfully requests reconsideration and withdrawal of this rejection.

### Conclusion

In summary, Applicant believes that the claims, as amended, now meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

Respectfully submitted,

**WILLIAM P. APPS**

By Stephanie M. Mansfield  
Stephanie M. Mansfield  
Reg. No. 43,773  
Attorney/Agent for Applicant

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**BROOKS & KUSHMAN P.C.**  
1000 Town Center, 22nd Floor  
Southfield, MI 48075  
Phone: 248-358-4400  
Fax: 248-358-3351